

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF HARDIN COUNTY WATER)
DISTRICT NO. 1 FOR APPROVAL OF A)
CONTRACT WITH THE UNITED STATES ARMY) CASE NO. 2011-00416
TO PROVIDE WATER SERVICE TO THE FORT)
KNOX MILITARY INSTALLATION)

ORDER

On October 13, 2011, Hardin County Water District No. 1 ("Hardin District") applied to the Commission for a Certificate of Public Convenience and Necessity ("Certificate") to acquire and operate water production and treatment facilities that are located at the Fort Knox Military Installation and owned by the United States Government ("Government"), to approve tariff revisions that implement the terms of a contract between it and the Government ("Contract"), and a deviation from 807 KAR 5:066 as it applies to the operation of the facilities in question.

On January 27, 2012, the Commission issued an Order in which we found that, *inter alia*, as Hardin District was already providing service to the public and as no immediate construction of facilities was proposed, neither Hardin District's acquisition of the Fort Knox Military Installation water production and treatment facilities nor the Contract required a Certificate.¹ We further found that the Commission exercised jurisdiction over Hardin District's provision of water service to the Fort Knox Military Installation and that, as the Contract contained provisions related to rates and

¹ Order of January 27, 2012 at 11.

conditions of service, KRS 278.160 and 807 KAR 5:011 required the Contract be filed with the Commission.² Finally we concluded that “KRS 278.020(1) requires that Hardin District apply for a Certificate of Public Convenience and Necessity for each project that the Contract identifies as an ‘initial system deficiency correction’ and that involves significant capital outlays.”³

Hardin District has petitioned for rehearing on the Commission’s Order of January 27, 2012. More specifically, Hardin District requests that the Commission reconsider its conclusion regarding the applicability of KRS 278.020(1) to projects that are identified as initial system-deficiency corrections. It asserts that these projects do not require a Certificate, as none of these projects will involve facilities used to furnish service to the public. KRS 278.020(1) prohibits the construction of “any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010.” The Contract, which in part requires the performance of the projects and provides a method for financing their cost, Hardin District argues, “is a private transaction.”⁴ As Hardin District is “providing all services to the Government ... [and] is not furnishing anything to the public,” it argues, a Certificate “is not required.”⁵

The Commission finds little merit in this argument. The position that Hardin District now articulates in its Petition is diametrically opposed to that expressed in its Application in which it sought Commission approval of the Contract and, more specifically, of the rates specified in that contract for service that Hardin District would

² *Id.* at 13.

³ *Id.*

⁴ Petition for Rehearing at 1.

⁵ *Id.*

provide to the U.S. Government. The Contract expressly provided that it was subject to Commission review and approval⁶ and refers to the rate that Hardin District will assess the Government as Hardin District's "regulated tariff rate."⁷

The transaction between Hardin District and the Government is not a private transaction. It involves a contract that has been filed and reviewed by the Commission, and that contains a regulated and tariffed rate. We fail to discern how the facilities in question and the rates assessed for the services that they provide can be subject to Commission regulation, yet changes to those facilities that will affect the quality of service rendered, that will be funded through specific components of a tariffed rate, and are governed by provisions of a Commission-reviewed contract can be considered part of a private transaction.

Moreover, the Commission questions how, given Hardin District's status as a political subdivision of the Commonwealth, it can engage in any "private transaction." As a water district, its primary purpose is "preserving and promoting the public health, convenience and welfare, and to provide fire protection to the citizens of any county in the state."⁸ When providing water service, Hardin District performs a governmental function⁹ and is not engaging in a private transaction.

In the alternative, Hardin District requests that the Commission provide clarification as to the initial system-deficiency correction projects that require a

⁶ Contract No. SPO600-11-8271 at 5.

⁷ *Id.*

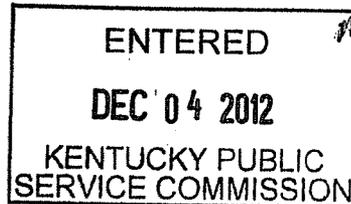
⁸ *Ryan v. Commissioners of Water District No. 1 of Kenton County*, 295 S.W.1023, 1024 (Ky. 1927). See also 56 OAG 36,219 (stating that the "water services rendered [by a water district] to each citizen constitutes a public function").

⁹ *South Woodford Water Dist. v. Byrd*, 352, S.W.3d 340, 343 (Ky. App. 2011).

Certificate. To the extent that clarification is required, the Commission notes that only projects involving the construction of facilities and a substantial capital outlay¹⁰ that might materially affect the financial condition of the water district require a Certificate. We have reviewed the 35 projects that the Contract has identified as "initial system deficiency corrections" and find that 28 of these projects do not involve either the construction of facilities or a substantial capital outlay. Of the remaining seven projects, we find that, based upon the limited description set forth in the record, each of these projects require a Certificate. These seven projects are listed the Appendix to this Order.

IT IS THEREFORE ORDERED that Hardin District's Petition for Rehearing is granted to the limited extent that the Commission has determined that only the projects listed in the Appendix to this Order meet the threshold for a Certificate.

By the Commission



ATTEST:



Executive Director

¹⁰ We do not agree with Hardin District's contention that because the improvements will be funded through the tariffed rate, the cost of the facilities should be considered immaterial. Such an interpretation would undermine any protection that KRS 278.020(1) affords to a ratepayer.

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2011-00419 DATED **DEC 04 2012**

ISDC Project No.	Project Cost	Summary Description
6	\$1,946,203	New Raw Water from the Muldraugh WTP to the 16-inch Raw Water Line between Otter Creek PS and Central WTP
10	\$1,182,443	Central WTP Clear Well
11	\$1,957,620	Fire Hydrant Replacement
15	\$1,773,822	Pipe Between Otter Creek PS and Central WTP
20	\$1,113,332	Distribution Pipe and Valves
21	\$3,034,130	Distribution Pipe and Valves
23	\$6,618,777	Distribution Pipe and Valves

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